

REC-111

DEC 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 22 1998

COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Carriage of the Transmissions)
Of Digital Television Broadcast Stations)

Amendments to Part 76 of the Commission's Rules)

CS Docket No. 98-120

TO: The Commission

RECEIVED

DEC 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

Benedek Broadcasting Corporation, The Chronicle Publishing Company, Draper Communications, LIN Television Corporation, Midwest Television, Paxton Media Group, Raycom Media, and Spartan Communications (licensees and owners of the stations listed in Appendix A) (the "Broadcast Group"), file these reply comments to underscore the importance the Group attaches to speedy Commission action resolving a number of critical issues that will provide the framework for digital cable carriage. These issues, which were discussed fully in our initial comments, require early resolution because they not only establish (and reaffirm) the basic market structure in which all of television (including digital television) functions, but also provide the framework against which programming, carriage and other private arrangements among broadcasters, program suppliers, and the cable industry must be worked out.

A number of other commenting parties urged the Commission to resolve these issues quickly, in recognition of their critical importance to the digital transition. And there is broad consensus as to how they should be resolved. We think it fair to suggest that the broadcast

No. of Copies rec'd
List ABCDE

CT9

industry is largely united on the way the Commission should address these subjects. Indeed, even with respect to the digital must-carry rules themselves, differences among broadcasters are at most limited to implementation logistics. There is no serious question in any segment of the industry that digital must-carry will be a prerequisite to a successful digital roll-out.

On the other hand, the cable industry has said very little about these critical transition issues – largely focusing only on the must-carry rules and making related statutory and constitutional assertions. Under the circumstances, the Broadcast Group once again limits its comments to the issues surrounding the manner and form of digital carriage. We will leave to others the arguments regarding the criticality, viability, and legality of the must-carry regime.

1. Network non-duplication and syndicated exclusivity. Virtually all broadcasters urged the Commission to recognize that the network non-duplication and syndicated exclusivity rules define and protect the integrity of local television markets by requiring cable systems to respect the contractual exclusivity rights that local broadcasters have negotiated with broadcast networks and syndicated programming providers.¹

2. Duplicative signals. Contrary to the views expressed by several cable commentators, the analog and digital signals of the same local station are not "duplicative" under the meaning of Section 614(b)(5) of the Communications Act. Congress clearly understood that this provision was intended to apply only when the signals in question were transmitted by two

¹ See Comments of The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), the Network Affiliated Stations Alliance ("NASA"), Pappas Telecasting, Inc., *et al.* and The Pikes Peak Broadcasting Co. *et al.* ("Pikes Peak"). Only one set of cable comments, filed by Adelphia Communications Corp. *et al.* ("Adelphia"), directly addresses this position.

different stations,² not where, as here, the analog and digital transmissions originate from a single local television station under one license.³

3. Carriage of the free digital broadcast signal in its entirety. Broadcasters and equipment manufacturers uniformly have urged the Commission to require cable operators to carry the *entire* complement of free (that is, non-subscription) services provided by broadcasters over their 6 MHz channels – whether carried pursuant to must-carry or retransmission consent.⁴ A rule ensuring consumer access to all free, digital services provided by broadcasters is the only way to allow broadcasters to test, and respond to, consumer reactions to the various digital broadcasting services they will be offering. A broadcaster's digital television offerings should succeed or fail in garnering audience support solely on the merits of their intrinsic worth – not as a result of the self-interested carriage decisions of a cable system seeking to make as little room as possible for a competing service. Broadcasters, the Commission, and the public have too much riding on digital television to permit it to fail because the audience has never been fully exposed to its potential.

² Section 614(b)(5) provides that "a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of *another local television station* which is carried on the cable system." 47 U.S.C. § 534(b)(5) (emphasis added). The legislative history further supports this interpretation, indicating that "substantial duplication" means the "simultaneous transmission of identical programming on *two stations*" when identical programming "constitutes the majority of the programming on *each station*." Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 628, 102d Cong. 2nd Sess. 94 (1992) (emphasis added).

³ See also Comments of The Association of Local Television Stations, Inc. ("ALTV"), Pappas, Paxson Communication Corp. ("Paxson"), and Sinclair Broadcast Group, Inc. ("Sinclair").

⁴ See Comments of ALTV, MSTV, Morgan Murphy Stations and Cosmos Broadcasting Corp. ("Morgan Murphy"), NAB, Paxson, and Sinclair (broadcasters), and Comments of Harris Corp., Sony Electronics Inc. ("Sony"), Phillips Electronics North America Corp. ("Phillips Electronics"), and Zenith Electronics Corp. ("Zenith") (equipment manufacturers).

4. Cable compatibility. Although parties differed somewhat with respect to the degree of FCC involvement in the standard-setting process, members of the broadcasting, cable and equipment manufacturing industries all acknowledged that compatibility is essential to the transition.⁵ Without compatibility standards, cable operators will be unable to ensure the functionality of features included in digital broadcast signals, such as channel navigation information, program guide information, and V-chip codes. The Commission should ensure that cable operators and receiver manufacturers develop an interface standard that will enable consumers to access the full complement of digital services provided by broadcasters. To this end, we continue to urge that the Commission set firm deadlines (before November 1999) by which compatibility standards must be finalized.

5. Non-degradation of digital signal. Broadcasters and equipment manufacturers urged the Commission to ensure that cable carriers do not technically degrade broadcasters' digital signals.⁶ That protection is essential to attracting and building an audience for digital television. Technical quality can be assured only if cable operators are required to carry the entire qualified digital bitstream of each station in the format in which the broadcaster originally transmitted it. Cable operators should not be able to degrade the quality of

⁵ See Comments of NAB, Morgan Murphy, and Sinclair (broadcasters); Comments of Consumers Electronics Manufacturers Assoc. ("CEMA") (FCC should do everything possible to encourage industry adoption of standard), Mitsubishi Electric America ("Mitsubishi"), Phillips Electronics, Sony and Zenith (equipment manufacturers); and Comments of the National Cable Television Assoc. ("NCTA") (FCC should support industry standard-setting), Adelphia (recognizes importance of compatibility), and GTE (FCC should foster compatibility standards) (cable operators).

⁶ See Comments of MSTV, ALTV, NAB, National Broadcasting Co., Inc. ("NBC"), Pappas and Paxson (broadcasters), and Comments of CEMA, Mitsubishi, Phillips Electronics, Sony and Zenith (equipment manufacturers).

broadcasters' free digital signals by stripping or by down-converting digital signals to other formats without the broadcaster's consent.

6. Channel position and navigation. As the Commission's analog rules recognize, cable operators may have an economic incentive to undermine the competitiveness of local broadcast stations by shifting local stations around or burying them in the cable channel lineup. These practices are prohibited in the analog context through the on-channel carriage rules. Broadcasters and equipment manufacturers filed comments urging the Commission to enact rules adapted to the digital context which continue to protect broadcasters from such discriminatory channel placement practices.⁷ At a minimum, cable systems should be required to guarantee the functionality of channel navigation protocols (such as PSIP) that link broadcasters' digital signals to their better-known analog channels.

7. Electronic Program Guides (EPGs) and navigational devices. Several parties filed comments urging the Commission to adopt a rule that will prohibit cable operators from favoring their own EPGs at the expense of those provided by or through broadcast transmissions. This goal can be achieved in part by ensuring that the cable operator may not strip any part of the free digital signal.⁸ But commenting parties also supported a proposal we outlined in our initial comments – namely, that the Commission should adopt cable rules akin to the open video system ("OVS") regulations that prohibit cable systems from excluding any local broadcast stations from, or discriminating against local broadcasters in, any EPG or navigation

⁷ See Comments of MSTV, ALTV, Morgan Murphy, NAB and NBC (broadcasters), and Comments of CEMA, Phillips Electronics and Sony (equipment manufacturers).

⁸ See Comments of ALTV, MSTV and NBC (broadcasters), Comments of Sony (equipment manufacturer) and Comments of Gemstar International Group Ltd. and Starsight Telecast, Inc. (developer of EPGs).

device provided by the cable system. Both steps are necessary; the former enhances competition in the EPG environment, the latter prohibits predatory discrimination by the cable industry.

8. Separate retransmission consent and must-carry elections. The Broadcast Group, like a number of other broadcasters,⁹ urged the Commission to permit broadcasters to make separate must-carry and retransmission consent elections for their analog and digital signals. While broadcasters and cable operators should be free to negotiate for digital and analog carriage at the same time,¹⁰ they should not be required to do so.

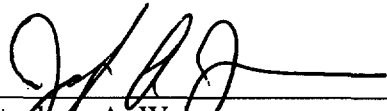
* * * * *

As noted above, we have submitted these reply comments to emphasize the need to quickly and expeditiously resolve the critical non-must-carry issues essential to advancing the digital transition. The Broadcaster Group is aligned with the rest of the broadcasting industry, however, in strongly supporting a mandatory carriage requirement for digital signals. When Congress enacted the must-carry requirements, it foresaw the transition to digital television, and authorized the Commission to take the steps necessary to ensure carriage of digital signals once they come on the air. The time is now, and the steps are clear – the Commission must implement digital must-carry requirements that ensure that broadcasters' free, over-the-air digital signals are carried to the cable subscribers in their local communities. Without cable carriage of digital signals, the digital transition will not justify the investment made in its future by broadcasters, Congress, the Commission and equipment manufacturers. Ultimately, those losses will pale

⁹ See Comments of ALTV, MSTV, Morgan Murphy, and NAB.

¹⁰ The Commission should reject the argument made by some cable commentators that broadcasters should be prohibited from linking analog and digital carriage in retransmission consent negotiations. This assertion is clearly intended to dilute the legitimate bargaining power a broadcaster could bring to the negotiation table.

Respectfully submitted,



Stephen A. Weisswasser
Jennifer A. Johnson
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
Phone: (202) 662-6000
Fax: (202) 662-6291
Attorneys for the Broadcast Group

BENEDEK BROADCASTING
CORPORATION

/s/ K. James Yager

K. James Yager
President & Chief Operating Officer
100 Park Avenue
Rockford, Illinois 61101
Phone: (815) 987-5350
Fax: (815) 987-5335

DRAPER COMMUNICATIONS, INC.

/s/ Thomas H. Draper

Thomas H. Draper
President
1729 N. Salisbury Boulevard
Box 2057
Salisbury, Maryland 21801
Phone: (410) 749-1111
Fax: (410) 749-6098

THE CHRONICLE PUBLISHING
COMPANY

/s/ Amy McCombs

Amy McCombs
President & Chief Executive Officer
The Chronicle Broadcasting Company, a
Division of the Chronicle Publishing
Company
1001 Van Ness Avenue
San Francisco, California 94109
Phone: (415) 441-4444
Fax: (415) 561-8142

LIN TELEVISION CORPORATION

/s/ Gregory M. Schmidt

Gregory M. Schmidt
Vice President, New Development
and General Counsel
1001 G Street, N.W.
Washington, D.C. 20001
Phone: (202) 879-9355
Fax: (202) 879-9397

MIDWEST TELEVISION, INC.

/s/ August C. Meyer

August C. Meyer
President
Jack B. Everette
President & Chief Operating Officer,
Broadcasting Operations
509 S. Neil Street
Post Office Box 20
Champaign, Illinois 61824
Phone: (217) 356-8333
Fax: (217) 373-3648

PAXTON MEDIA GROUP, INC.

/s/ Richard Paxton

Richard Paxton
President, WPSD-TV
J. Fred Paxton
President
100 Television Lane
Post Office Box 1197
Paducah, Kentucky 42002
Phone: (502) 415-1900
Fax: (502) 415-2020

RAYCOM MEDIA, INC.

/s/ John E. Hayes

John E. Hayes
President/Chief Executive Officer
Rebecca S. Bryan
Vice President/General Counsel
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, Alabama 36104
Phone: (334) 206-1400
Fax: (334) 206-1555

SPARTAN COMMUNICATIONS, INC.

/s/ Nick W. Evans

Nick W. Evans
President/Chief Executive Officer
John W. West
Executive Vice President
250 International Drive
Post Office Box 1717
Spartanburg, South Carolina 29304
Phone: (864) 576-7777
Fax: (864) 587-5425

December 22, 1998

APPENDIX A
THE BROADCAST GROUP STATIONS

Benedek Broadcasting Corp.

KAUZ-TV (CBS), Wichita Falls, TX
KCOY-TV (CBS), Santa Maria, CA
KDLH(TV) (CBS), Duluth, MN
KGWC-TV (CBS), Casper, WY
KGWR-TV, Rock Springs, WY*
KGWL-TV, Lander, WY*
KGWN-TV (CBS), Cheyenne, WY
KSTF(TV), Scottsbluff, NE*
KTVS(TV), Sterling, CO*
KHQA-TV (CBS), Quincy, IL
KMIZ(TV) (ABC), Columbia, MO
KOSA-TV (CBS), Odessa, TX
WBKO (ABC), Bowling Green, KY

WHOI(TV) (ABC), Peoria, IL
WHSV-TV (ABC), Harrisonburg, VA
WIBW-TV (NBC), Topeka, KS
WIFR(TV) (CBS), Rockford, IL
WILX-TV (NBC), Lansing, MI
WMTV(TV) (NBC), Madison, WI
WSAW-TV (CBS), Wausau, WI
WTAP-TV (NBC), Parkersburg, WV
WTOK-TV (ABC), Meridian, MS
WTRF-TV (CBS, ABC), Wheeling, WV
WTVY-TV (CBS), Dothan, AL
WWLP(TV) (NBC), Springfield, MA
WYTV(TV) (ABC), Youngstown, OH

Chronicle Publishing Co.

KRON-TV (NBC), San Francisco, CA
WOWT(TV) (NBC), Omaha, NE
KAKE-TV (ABC), Wichita, KS

KLBY(TV), Colby, KS*
KUPK-TV, Garden City, KS*

Draper Communications, Inc.

WBOC(TV) (CBS), Salisbury, MD

LIN Television Corp.

WAVY-TV (NBC), Portsmouth, VA
KXAN-TV (NBC), Austin, TX
KXAM-TV, Llano, TX*
WOOD-TV (NBC), Grand Rapids, MI
WISH-TV (CBS), Indianapolis, IN

WANE-TV (CBS), Fort Wayne, IN
WIVB-TV (CBS), Buffalo, NY
WTNH-TV (ABC), New Haven, CT
WAND(TV) (ABC), Decatur, IL

Midwest Television, Inc.

WCIA(TV) (CBS), Champaign, IL
WCFN(TV), Springfield, IL*

WMBD-TV (CBS), Peoria, IL
KFMB-TV (CBS), San Diego, CA

Paxton Media Group, Inc.

WPSD-TV (NBC), Paducah, KY

Raycom Media, Inc.

KFVS-TV (CBS), Cape Girardeau, MO
KNDO-TV (NBC), Yakima, WA
KNDU(TV), Richland, WA*
KOLD-TV (CBS), Tucson, AZ
KSFY-TV (ABC), Sioux Falls, SD
KABY-TV, Aberdeen, SD*
KPRY-TV, Pierre, SD*
KSLA-TV (CBS), Shreveport, LA
KTVO(TV) (ABC), Kirksville, MO
KWVL(TV) (NBC), Waterloo, IA
WACH(TV) (Fox), Columbia, SC
WAFB(TV) (CBS), Baton Rouge, LA
WAFF(TV) (NBC), Huntsville, AL
WDAM-TV (NBC), Laurel, MS
WECT(TV) (NBC), Wilmington, NC
WLUC-TV (NBC/ABC), Marquette, MI

WMC-TV (NBC), Memphis, TN
WPBN-TV (NBC), Traverse City, MI
WTOM-TV, Cheboygan, MI*
WSTM-TV (NBC), Syracuse, NY
WTNZ(TV) (Fox), Knoxville, TN
WTOC-TV (CBS), Savannah, GA
WTVM(TV) (ABC), Columbus, GA
WTVR-TV (CBS), Richmond, VA
WUPW(TV) (Fox) Toledo, OH
WFLX(TV) (Fox), West Palm Beach, FL
WNWO-TV (NBC), Toledo, OH
WXIX-TV (Fox), Newport, KY
WOIO(TV) (CBS), Shaker Heights, OH
WLII(TV) (Ind.), Caguas, PR
WSUR-TV, Ponce, PR*

Spartan Communications, Inc.

WSPA-TV (CBS), Spartanburg, SC
WNEG-TV, Toccoa, GA*
WBTW(TV) (CBS), Florence, SC
KIMT(TV) (CBS), Mason City, IA
WMBB(TV) (ABC), Panama City, FL
WJBF(TV) (ABC), Augusta, GA

WRBL(TV) (CBS), Columbus, GA
WKRG-TV (CBS), Mobile, AL
KWCH-TV (CBS), Wichita, KS
KBSD-TV, Ensign, KS*
KBSH-TV, Hays, KS*
KBSL-TV, Goodland, KS*

* Denotes satellite of preceding station.